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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----X
JAMES MORALES,

PLAINTIFF,

-against- Case No.:
1:16-CV-02134

KAVULICH & ASSOCIATES, P.C., GARY KAVULICH,
ROSEWALL GARDENS ASSOCIATES, LP f/k/a
ROSEWALL GARDENS ASSOCIATES and ROSEWALL,
INC.,

DEFENDANTS.
-----X

DATE: December 6, 2016
TIME: 11:48 A.M.

CONTINUED DEPOSITION of the
Defendant, GARY KAVULICH, taken by the
Plaintiff, pursuant to a Court Order and to
the Federal Rules of Civil Procedure, held
at the offices of Diamond Reporting, Inc.,
16 Court Street, Brooklyn, New York 11241,
before Jamie Willis, a Notary Public of the
State of New York.

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A P P E A R A N C E S:

AHMAD KESHAVARZ, ESQ.
Attorney for the Plaintiff
JAMES MORALES
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Attorney for the Defendants
KAVULICH & ASSOCIATES, P.C.,
GARY KAVULICH, ROSEWALL GARDENS
ASSOCIATES, LP f/k/a ROSEWALL GARDENS
ASSOCIATES and ROSEWALL, INC.
775 Park Avenue, Suite 255
Huntington, New York 11743

ALSO PRESENT:

JESSICA MOODY, Observing

* * *

1

2 F E D E R A L S T I P U L A T I O N S

3

4

5 IT IS HEREBY STIPULATED AND AGREED by and
6 between the counsel for the respective
7 parties herein that the sealing, filing and
8 certification of the within deposition be
9 waived; that the original of the deposition
10 may be signed and sworn to by the witness
11 before anyone authorized to administer an
12 oath, with the same effect as if signed
13 before a Judge of the Court; that an
14 unsigned copy of the deposition may be used
15 with the same force and effect as if signed
16 by the witness, 30 days after service of
17 the original & 1 copy of same upon counsel
18 for the witness.

19

20 IT IS FURTHER STIPULATED AND AGREED that
21 all objections except as to form, are
22 reserved to the time of trial.

23

24

* * * *

25

1 G. KAVULICH

2 (Whereupon, documents were
3 premarked as Plaintiff's Exhibits 9
4 and 10 for identification as of this
5 date by the Reporter.)

6 G A R Y K A V U L I C H, called as a
7 witness, having been first duly sworn by a
8 Notary Public of the State of New York, was
9 examined and testified as follows:

10 EXAMINATION BY

11 MR. KESHAVARZ:

12 Q. Please state your name for the
13 record.

14 A. Gary Kavulich.

15 Q. What is your address?

16 A. 181 Westchester Avenue, Suite
17 500C, Port Chester, New York 10573.

18 Q. Thanks for coming back.

19 What steps, if any, do you take
20 to determine whether a judgment you're
21 executing upon is valid, that is if it
22 hasn't been vacated or satisfied?

23 A. We look at the notes and the
24 scanned documents.

25 Q. Anything else?

1 G. KAVULICH

2 A. No. That's all we have.

3 There's nothing else to look at.

4 Q. The notes, are those your own
5 inhouse notes?

6 A. Yes.

7 Q. You don't mean notes from
8 someone else?

9 A. What do you mean by someone
10 else?

11 Q. Are there notes from another
12 company that go to you or do you mean your
13 inhouse notes?

14 A. No, our inhouse notes.

15 Q. Other than Mr. Morales, have
16 you ever executed on a judgment that either
17 was never entered or vacated or satisfied,
18 has that ever happened before?

19 A. Not to my recollection.

20 Q. If you were sued for that
21 before, you'd remember that?

22 A. Yes, I believe so.

23 Q. There was, in the document
24 production by the marshall -- and we can
25 pull up the documents in a few minutes --

1 G. KAVULICH

2 indication of executing against someone who
3 did not have a judgement against them, a
4 person named Soto, does that ring a bell to
5 you?

6 A. No.

7 Q. Okay. So, we'll pull up those
8 documents in a little bit.

9 Now, one of the issues in this
10 case is that Mr. Morales' bank account was
11 restrained even though he didn't have a
12 judgment and it was ultimately released,
13 correct?

14 A. Which one? You made two
15 statements.

16 Q. You executed on the bank
17 account when there was no judgment,
18 correct?

19 A. Correct.

20 Q. And ultimately you released the
21 restraint from the bank account?

22 A. Correct.

23 Q. Did you release it by informing
24 the marshall to release it or did you do it
25 by informing the bank to release it?

1 G. KAVULICH

2 A. I don't recall.

3 Q. Is it your normal practice to
4 do one or the other?

5 A. Usually to do both, if the
6 marshall is involved.

7 Q. Why would you do both?

8 A. Just to cover all our bases.

9 Q. Has it ever come to pass that
10 you've only given the notice to one, either
11 the bank and not the marshall or only the
12 marshall and not the bank?

13 A. I'm only aware of or recollect
14 one case.

15 Q. And when was that?

16 A. The other case that you're
17 suing me for.

18 Q. That's Mr. Prage's case?

19 A. Yes.

20 Q. And not to get into that case,
21 just a couple of sentences.

22 In that case, the discovery
23 apparently showed that when there was an
24 order vacating a judgment against my
25 client -- excuse me, let me rephrase that.

1 G. KAVULICH

2 In Prage, there was an order
3 holding that a restrained bank account
4 contained entirely exempt funds, correct?

5 A. I don't recall the exact
6 reason. I recall that that was the exact
7 reason, but the court denied our motion
8 objecting to Mr. Prage's exemption claim
9 and, therefore, ordered the account
10 released. But I don't know or recall the
11 absolute specifics as to the four corners
12 of that.

13 Q. And in that instance, you
14 contend that you sent the notice to the
15 bank but not to the marshall?

16 A. Actually, we sent it to both.
17 We sent it to the bank contemporaneously
18 upon receipt of the decision, but we sent
19 it to the marshall, I think the time is a
20 bit attenuated.

21 Q. The order, was it May and you
22 sent it to the marshall in August?

23 A. July, I think.

24 Q. End of July?

25 A. Sometime in July, I believe.

1 G. KAVULICH

2 Q. What steps did you take to make
3 sure that your office sent it to both?

4 A. I do them all now. I don't
5 rely on anyone else in the office to do it.

6 Q. And I take it that's a change?

7 A. Yes.

8 Q. And when did that change occur,
9 approximately?

10 A. Around this time. When this
11 happened.

12 Q. After the time that you were
13 sued in this FDCPA action?

14 A. No. Around the time that --
15 the tenuated time period when the Prage
16 matter came up. Before I was sued.

17 Q. The Prage matter, was that an
18 impetus for changing the fact that you were
19 doing the reviews or was it something else?

20 A. No, it was that. I don't
21 generally purposely contravene a court
22 order.

23 Q. And the other reason was that
24 you had a staff member that normally
25 handled that that moved to Laos; is that

1 G. KAVULICH

2 right?

3 A. That was much later after that.

4 Q. What was his name again?

5 A. Collin.

6 Q. Now, when you send a notice to
7 the bank, do you provide a copy of that
8 notice to the consumer?

9 A. Sure.

10 Q. And that's your office policy?

11 A. Yes.

12 Q. Do you have any proof of that
13 happening either in Prage or in this case?

14 A. They go out regular mail, so
15 no.

16 Q. Would there be a notation in
17 the collection notes if the copy of the
18 letter to the bank was, in fact, sent to
19 the consumer?

20 A. No, because that's all part of
21 one.

22 Q. Would the letter to the bank
23 have a CC to the consumer, would it say CC
24 consumer?

25 A. No, nor does the letter to the

1 G. KAVULICH

2 consumer say CC bank.

3 Q. If the consumer testified that
4 they'd never gotten a notice from your
5 office or from anyone that a bank account
6 had been released, do you have any reason
7 to believe that --

8 A. Rephrase that again.

9 Q. After you contend that you sent
10 a notice to a bank to remove a restraint --

11 A. I misunderstood. Then I have
12 to restate my last answer.

13 Q. Go ahead.

14 A. When we send a release to the
15 bank, no, we don't send anything to the
16 judgment debtor or to the defendant.

17 Q. Why not?

18 A. Because they get it in court.

19 Q. How are they supposed to know
20 that the bank actually releases the money?

21 A. When they have access to their
22 account.

23 Q. Any other way?

24 A. They could call us.

25 Q. Any other way?

1 G. KAVULICH

2 A. They could check their account.

3 Q. Any other way?

4 A. Not that comes to mind right
5 now.

6 Q. Now, if the marshall is not
7 notified of the order removing the
8 restraint, then why wouldn't the marshall
9 just re-execute on the same restraint?

10 A. Say that again.

11 Q. If you don't tell the marshall
12 that the restraint has been lifted, all the
13 marshall knows is maybe there's an order to
14 show cause to stop collection until there's
15 an order vacating a judgment or deeming
16 funds exempt, right?

17 A. I'm not being purposely obtuse,
18 but I don't understand your question.

19 MR. PASHKIN: I'm going to
20 object. He can't know what the
21 marshall would know or not know.

22 MR. KESHAVARZ: Fine.

23 Q. I'm just asking -- the standard
24 way this works, and correct me if I'm
25 wrong, is that you give a restraint -- when

1 G. KAVULICH

2 you send a restraint to both the bank and
3 the marshall, correct?

4 A. No. After all of this, you
5 still don't know this. Both of you guys, I
6 just can't believe this.

7 We send a restraining notice to
8 the bank. If the circumstances are such
9 that there are moneys above the exemption
10 then we send a property execution to the
11 marshall. We never send a restraint to the
12 marshall.

13 Q. But isn't the marshall supposed
14 to notify the consumer that there is an
15 information subpoena and bank restraint or
16 does that come from the bank?

17 A. You have to ask the marshall.
18 I know we send a restraint to the bank. If
19 there's sufficient funds, we send it to the
20 marshall. I've answered this like ten
21 times. Really.

22 Q. Let me show you what's been
23 marked as Plaintiff's Exhibit 9. This was
24 produced by the judgment creditor in this
25 case, the landlord. It was their ledger

1 G. KAVULICH

2 about payments as to Mr. Morales.

3 Can you review that and let me
4 know when you're done, please.

5 A. I'm done.

6 Q. So, according to the landlord's
7 ledger, the account that you were executing
8 upon against Mr. Morales had, in fact, been
9 paid entirely, right?

10 A. I've never seen this before and
11 not according to what I know about it.

12 Q. So, let's drill down to that.

13 When you receive a payment
14 either from Mr. Morales or here --

15 A. Clara Potter.

16 Q. Thank you.

17 So, in this case, there are two
18 judgement debtors. One was Clara Potter,
19 who actually had a judgment, and then there
20 was Mr. Morales, who actually did not have
21 a judgement against him, correct?

22 A. Right. There was a debtor and
23 a judgment debtor, correct.

24 Q. And your office was receiving
25 payments from Clara Potter, correct?

1 G. KAVULICH

2 A. Correct.

3 Q. And do you forward those
4 payments on to the judgment creditor, the
5 Rosewall Gardens?

6 A. Yes.

7 Q. And how often do you forward
8 payments that you receive from judgment
9 debtors or alleged judgment debtors in this
10 case, how often do you forward that to
11 Rosewall?

12 A. Monthly.

13 Q. Do you provide a single check
14 with -- how does the payment system work?

15 A. We send it out a month later,
16 the middle of the following month, with a
17 remittance check, an escrow check, with an
18 outline of the name of the case, or at
19 least the relevant information about -- in
20 this type of a debt, who the landlord was,
21 the address, the apartment number, the
22 defendant or defendants, how much we
23 collected, what the client's share is and
24 what our share is.

25 Q. And who's in charge of keeping

1 G. KAVULICH

2 track of how much is due on the punitive
3 judgment, your office or the landlord?

4 A. Our office, once they give it
5 to us. If there's any change, they would
6 seemingly let us know.

7 Q. So, are there ledger statements
8 to the landlord that would govern the
9 payments received from Clara Potter?

10 A. What we gave them is what I
11 just mentioned. As we collect a payment,
12 then we give them the identifier
13 information and what we collected that
14 month.

15 Q. You do separate payments for
16 each account or do you do one?

17 A. Let's just say for argument's
18 sake we had five cases for 2300 Sedgwick,
19 we'd break that down. Five different
20 payments that may be in one physical check.

21 Q. But for each index number, do
22 you give a single check or -- I mean
23 because you're collecting on 5,000
24 judgements, so --

25 A. No. I have 5,000 judgments.

1 G. KAVULICH

2 I'm collecting on maybe 500 of them.

3 Q. Fair enough. I'm just
4 wondering.

5 So, are you saying the payments
6 you receive in a month in a particular
7 index number, you give one check for that
8 index number per month if you collect
9 money, is that what you're saying?

10 A. No. What I'm saying is -- I
11 don't know -- so, let's just say we have
12 five cases from this address, 2300
13 Sedgwick. We have these folks, then we
14 have John Doe, then we have Jane Doe and
15 then we have John Smith, whatever.

16 We have a remittance sheet that
17 shows those five identifiers, the parties,
18 apartments, et cetera, how much we
19 collected for each, how much the client's
20 share is for each and what our share is.
21 That then is -- there's a total or subtotal
22 and then there's one check for all five.

23 Q. And is that a physical ledger
24 that goes with each check?

25 A. Yeah, it's a piece of paper.

1 G. KAVULICH

2 Q. Is that piece of paper
3 generated by your computer system?

4 A. Yes.

5 Q. Where on your collection notes
6 would those ledgers be reflected?

7 A. They're not. They print. That
8 goes with the check. It's not in the
9 system.

10 Q. So, when you give the check and
11 it says how much goes to Rosewall, how much
12 goes to you for fees, do you also print in
13 the ledger what the balance due is?

14 A. No.

15 Q. If I understand correctly from
16 your prior testimony, you don't calculate
17 the balance due, you rely on the marshall
18 to do that, correct?

19 A. On income executions or
20 property executions, yes.

21 Q. So, when you make a remittance
22 to Rosewall, are you saying that you don't
23 know what the current balance is on those
24 accounts?

25 A. No. I'm saying we can

1 G. KAVULICH

2 ascertain it, but that's not the purpose
3 when we remit the check. We're just
4 remitting money for that particular month
5 or period.

6 Q. But that balance left is not
7 stated on the remittances?

8 A. Correct.

9 Q. When you said you can calculate
10 the balance due --

11 A. No, I didn't say that. I said
12 I can get it.

13 Q. How can you get it?

14 A. I would call the marshall.

15 Q. Any other way?

16 A. I could sit there and do the
17 math, but the marshall's system and the
18 calculation of interest, I trust their
19 numbers.

20 Q. But if I understand correctly,
21 your computer system isn't set up to both
22 calculate the interest and apply the
23 payments and determine the balance on a
24 judgment account; is that right?

25 A. Correct.

1 G. KAVULICH

2 Q. So, any payments that were made
3 on this index number that went to Rosewall
4 would be reflected on Exhibit 9, correct?

5 A. Again, I don't know. I've
6 never seen this in all the years that I've
7 done work for them.

8 Q. Because you don't see it from
9 Rosewall's accounting, you see it from your
10 own accounting?

11 A. See what, the payments?

12 Q. The ledger, right.

13 A. Yeah, I can see the payments
14 that we received from our account. I don't
15 know -- cash receipts seems somewhat
16 self-explanatory, but I don't even know.

17 Q. That was the next question I
18 was going to ask.

19 In the ledger, Exhibit 9, page
20 two, it talks about cash receipt and legal.
21 I guess I was going to ask you if you knew
22 what legal meant?

23 A. No.

24 Q. What is the split between you
25 and Rosewall for each payment that you get

1 G. KAVULICH

2 on a judgment account?

3 MR. PASHKIN: Objection as to
4 relevance.

5 A. One-third, two-thirds.

6 Q. One-third to you, two-thirds to
7 them?

8 A. Yeah. I wish it was the other
9 way.

10 Q. And do expenses come off the
11 top before you divide it?

12 MR. PASHKIN: Objection as to
13 relevance.

14 A. No, they come out of his share.

15 Q. So, it's one-third to
16 two-thirds, and from that two-thirds the
17 expenses come out?

18 A. Correct.

19 MR. KESHAVARZ: Mitchell, can
20 we stipulate that this is the
21 documents from Rosewall, that this is
22 the ledger produced by Rosewall?

23 MR. PASHKIN: I don't have it
24 in front of me. You can identify it
25 as what you believe was produced, but

1 G. KAVULICH

2 he can't testify as to its contents,
3 though.

4 MR. KESHAVARZ: And you can't
5 stipulate to it?

6 MR. PASHKIN: No.

7 Q. Now, do you know why it says
8 the current balance due is negative \$402?

9 MR. PASHKIN: Objection. He
10 can't testify as to what is on
11 someone else's document.

12 MR. KESHAVARZ: Maybe he can.
13 It depends --

14 A. No.

15 MR. PASHKIN: That's my
16 objection. So, we're not arguing.
17 I'm putting my objection on the
18 record.

19 MR. KESHAVARZ: I know you're
20 not intending to do this, but you can
21 make an objection as to form, because
22 there's a concern, and even though --

23 MR. PASHKIN: I'm making an
24 objection that he's not competent to
25 testify as to a document another

1 G. KAVULICH

2 entity created.

3 MR. KESHAVARZ: And that's
4 preserved by an objection to form.
5 And I ask that you limit the
6 objection as to form or if you want
7 to talk about preserving a privilege.

8 MR. PASHKIN: I'm going to put
9 a specific objection on the record.
10 That's what I'm going to do.

11 MR. KESHAVARZ: I don't believe
12 that's appropriate.

13 A. Look, I've always answered your
14 questions to the best of my ability. I've
15 never seen it and I don't know.

16 Q. So, this is Rosewall's end.
17 Are these payments matching up
18 to your payments?

19 Let me rephrase that.

20 If I had the collection notes,
21 are you saying the payment history, in
22 terms of the amount that gets forwarded to
23 the client, the amount that gets kept as a
24 collection fee, are you saying that that
25 payment history would not be reflected on

1 G. KAVULICH

2 the collection notes?

3 A. Say it again.

4 Q. Basically what I'm trying to do
5 is compare Exhibit 9, which is Rosewall's
6 ledger, with your records and try to put
7 them side by side to see if those payments
8 match.

9 So, I guess I'm asking, where
10 in your documents or where in your system
11 would that ledger exist, if anywhere, so
12 that I could match up the payment dates and
13 the amounts?

14 A. Then I think what you're asking
15 for are copies of the remittances. Right?
16 Because that shows the breakdown of what
17 was collected and what was given to the
18 client by month.

19 Q. So, are you able to generate a
20 report with all the remittances?

21 A. I would have to make copies of
22 those copies that we had already sent.

23 Q. So, it's a physical piece of
24 paper, the remittances?

25 A. Yeah, sure. How else are you

1 G. KAVULICH

2 going to do it?

3 Q. Well, the computer generates
4 it. I'm just asking. Nothing
5 argumentative.

6 But the computer generates the
7 remittances, right?

8 A. Yes.

9 Q. So, I'm just wondering, the
10 computer system can't just generate a
11 ledger of all the payments, you have to
12 keep the hardcopy?

13 A. You mean like a screen shot of
14 it? Yeah.

15 Q. Your system can do that?

16 A. Yeah.

17 Q. That's not in the collection
18 notes, it's somewhere else?

19 A. No, that wouldn't be in there.
20 That's there (indicating). This here, how
21 much we collect.

22 MR. KESHAVERZ: Let's mark this
23 as an exhibit.

24 A. I can give you a breakdown. I
25 think that's what you're asking for, right?

1 G. KAVULICH

2 I can provide you with that.

3 Q. Would you have to go to the
4 physical pieces of paper, or how would you
5 do that?

6 Would you go to the physical
7 pieces of paper that were the remittances
8 or would you obtain that by some other
9 manner?

10 A. No, I think we have a screen
11 like that.

12 Q. All right.

13 A. As part of the accounting.

14 Q. Do you know if that screen has
15 been produced? Because I don't recall
16 seeing such a screen, but I could be
17 mistaken.

18 A. I don't remember everything
19 that was --

20 MR. PASHKIN: I don't have my
21 file.

22 MR. KESHAVARZ: What was that?

23 MR. PASHKIN: I don't have my
24 file.

25 Q. So, it's a separate screen on

1 G. KAVULICH

2 your computer system that would list the
3 payments that are made to the landlord and
4 the amount that goes to them and the amount
5 that goes to the collection fee?

6 A. Correct.

7 Q. Now, showing you Exhibit 10.
8 This is your collection notes for the index
9 number that is for both Clara Potter and
10 James Morales, correct?

11 A. Correct.

12 Q. Now, you pointed before to the
13 first page on the bottom that has a list of
14 payments?

15 A. Correct.

16 Q. Is that different than the
17 ledger that you're talking about in terms
18 of payments to landlord?

19 A. Yes.

20 Q. That's different?

21 A. Yes.

22 Q. Because what I'm trying to ask
23 you is to try to match up the landlord's
24 records with yours and we've had a motion
25 to compel to try to get those documents.

1 G. KAVULICH

2 My question is this --

3 A. From the landlord.

4 Q. From your records.

5 A. Okay.

6 Q. Let me just ask you: Are you
7 able to get that ledger generated and
8 either e-mail or faxed so that we can just
9 compare it to the landlord's letter?

10 A. I can at some point later on
11 today, but not until after 2:30. Because
12 the person who does that is --

13 MR. PASHKIN: This has to end
14 at 2:45.

15 MR. KESHAVARZ: Off the record.

16 (Whereupon, an off-the-record
17 discussion was held at this time.)

18 Q. You can have that e-mailed to
19 me by the end of the day?

20 A. Sure.

21 MR. KESHAVARZ: Can we have an
22 agreement if he gets it, that will be
23 forwarded to me?

24 MR. PASHKIN: I have to talk to
25 my client, actually. So, no. I

1 G. KAVULICH

2 haven't seen the document. I'm going
3 to reserve the right to examine the
4 document for privilege and relevance.
5 So, I'm not agreeing to produce
6 something I haven't seen.

7 Q. Does that screen have a name?

8 A. I don't think so.

9 Q. Is it called the collection
10 notes screen or --

11 A. No. I think just the
12 accounting. There's no name for it.

13 Q. It's an accounting screen?

14 A. We call it that informally, I
15 guess. I don't know if we've ever referred
16 to it.

17 Q. How does that work, do you see
18 different tabs in the software where you
19 just click on one tab or the other?

20 A. No. It's just one page with --
21 like we just described. It's not a
22 spreadsheet with tabs.

23 Q. No.

24 I mean the collection notes
25 that are Exhibit 10, is that like one tab

1 G. KAVULICH

2 in the notes and you click on another tab
3 and you see this accounting screen?

4 A. No, you'd have to go to
5 accounting, to just accounting.

6 Q. Okay.

7 What other screens can you get,
8 other than Exhibit 10 and let's just call
9 it the accounting history, what other
10 screens are there?

11 A. If they came up on a queue for
12 a summons or things like that. These are
13 the only substantive informational
14 depositories or places where you get
15 information.

16 Q. When you say if it comes up in
17 a queue --

18 A. Right. We had spoken about
19 this before. It's like a tickler.

20 Q. So, is that a list of tickled
21 items to come and that have passed, is it
22 set up that way?

23 A. Yeah. It would be like today's
24 the 6th. It will come up what summons are
25 due today.

1 G. KAVULICH

2 Q. Would it give you an historical
3 list of the prior deadlines and the future
4 deadlines?

5 A. Historical list? It's the
6 cases that are tickled today. That's all.
7 Or if they were on from yesterday and you
8 didn't do anything with them.

9 Q. Now, are you able to tell from
10 your collection notes the date that you
11 sent the information subpoena and bank
12 restraint as to Mr. Morales' account?

13 A. Per these notes, it says
14 April 2nd.

15 Q. Of what year?

16 A. 2015.

17 MR. KESHAVARZ: Let's go off
18 the record.

19 (Whereupon, an off-the-record
20 discussion was held at this time.)

21 Q. Are you looking at the entry of
22 4/21/2015?

23 A. No, I was looking at April 2nd,
24 but not 4/21.

25 Q. So, April 2nd says that the

1 G. KAVULICH

2 information subpoena and bank restraint was
3 sent to JP Morgan Chase?

4 A. Yes.

5 Q. I'm interested in TD Bank, when
6 was the information subpoena and bank
7 restraint sent to TD Bank?

8 A. It looks like April 10th -- no,
9 sorry. I don't know. I'm not sure.

10 Q. Does a listing for 4/27/2015
11 help?

12 A. No.

13 Q. Before we mark these, can you
14 identify what Morales 51, 52 and 53 are and
15 tell me if the documents go together or if
16 they're separate?

17 A. This is, this page
18 (indicating).

19 Q. Morales 51.

20 A. Morales 51 is a copy of a
21 portion of what was sent as a bank
22 restraint to TD Bank. And that's dated
23 March 18th, 2015.

24 Q. And when you say it's a
25 portion, what else --

1 G. KAVULICH

2 A. There are more pages to it.

3 Q. That one says 3/18/2015, is
4 that the date it's actually mailed or do
5 you know if there's a lag between the two?

6 A. Usually they go out on the same
7 day.

8 Q. And would that be the date that
9 the bank account was restrained or do you
10 know?

11 A. No, that's the date that it was
12 sent.

13 Q. What is Morales 52?

14 A. That is a property execution.

15 Q. And you're going to yell at us
16 for not knowing this after all this time,
17 but what's the difference between 51 and
18 52?

19 A. You guys are spending tens of
20 thousands of dollars to sue me and to
21 protect your client and you can't take the
22 time to remember what these things mean?

23 Q. Go ahead.

24 You said you guys, you mean me
25 and your client?

1 G. KAVULICH

2 A. Now, it's directed towards you.
3 I mean common. This isn't rocket science.
4 This is the property execution that we sent
5 to Marshall Biegel, I believe.

6 Q. And that's Morales 52, correct?

7 A. Correct.

8 Q. And that's sent on 4/27. Why
9 are there difference in times?

10 Do you get the information
11 subpoena back and then send it to the
12 marshall for execution?

13 A. Yes.

14 Q. So, the consumer wouldn't
15 know -- there actually wouldn't be a bank
16 restraint until Morales 52 is issued?

17 A. No.

18 THE WITNESS: Can I go have a
19 cigarette, please?

20 MR. KESHAVARZ: Please.

21 Off the record.

22 (Whereupon, an off-the-record
23 discussion was held at this time.)

24 MR. KESHAVARZ: Since we
25 referenced Morales 51 and 52, let's

1 G. KAVULICH

2 go ahead and formally mark them as
3 exhibits.

4 (Whereupon, the aforementioned
5 documents were marked as Plaintiff's
6 Exhibits 11 and 12 for identification
7 as of this date by the Reporter.)

8 Q. Now, just one last question on
9 Exhibit 11, Morales 51.

10 You forward this to TD Bank,
11 right?

12 A. Yes.

13 Q. And you know and you intend for
14 TD Bank to forward this to the consumer,
15 Mr. Morales, correct?

16 A. Yes.

17 Q. Going back to Plaintiff's
18 Exhibit 10, the collection notes. If you
19 go to the entry on the second page of
20 4/30/2015, please. And is that an entry
21 that you put in?

22 A. No.

23 Q. Even though it says G. Kavulich
24 as the user?

25 A. For 4/30 it doesn't say G.

1 G. KAVULICH

2 Kavulich.

3 Well, there are two.

4 Q. The higher one? Excuse me.

5 A. Yes, that was mine.

6 Q. Can you read that into the
7 record?

8 A. "Patrick Castellan, attorney
9 with Claro, called office and stated we
10 don't a judgement. Explained L&T judgment.
11 Kind of set him back on his heels."

12 Q. Now, Claro is the volunteer
13 legal services clinic; is that right?

14 A. Yes.

15 Q. Why didn't you go and check to
16 see if, in fact, there was a judgment
17 against Mr. Morales when the attorney from
18 Claro told you there, in fact, was no
19 judgement?

20 A. Because my recollection is that
21 Mr. Castellan called and gave me the index
22 number of the civil case that had been
23 discontinued that we discussed last time.

24 Q. Now, having gone through all
25 the court papers now and before, do you

1 G. KAVULICH

2 know where Mr. Morales would have obtained
3 a copy of the landlord/tenant -- the civil
4 court index number?

5 A. Can I --

6 Q. Let me rephrase that.

7 Did you forward to Mr. Morales
8 any document with the civil court index
9 number?

10 A. Well, he was served with the
11 summons. The mailing would have been sent
12 to him and the notice of discontinuance
13 would have been. And they all would have
14 contained the civil index number.

15 Q. Anything else that you would
16 have sent to Mr. Morales that would have
17 had the index number for the Civil Court
18 proceeding?

19 A. No.

20 Q. Now, go to the entry of
21 5/7/2016. I can't really read that.

22 A. What's the --

23 Q. "Received another call" --

24 A. Yes.

25 Q. Can you read that into the

1 G. KAVULICH

2 record, please.

3 A. "Received another call from a
4 Legal Aid attorney insisting that our
5 restraint is bad. She looked up the L&T
6 index number on e-courts and saw a
7 different caption. I explained to her that
8 the L&T index numbers aren't on e-courts
9 and that what she is seeing is indeed a
10 different case with a similar index, but
11 it's not the same."

12 Q. And do your notes indicate who
13 put that into the system?

14 A. Matthew Casper.

15 Q. And what were Matthew Casper's
16 main responsibilities there at the time?

17 A. He was our associate at the
18 time.

19 Q. What were his main
20 responsibilities?

21 A. Draft papers, speak to clients.
22 Attorney work.

23 Q. And given the two calls by the
24 Legal Aid attorneys, particularly in
25 retrospect, should your office have checked

1 G. KAVULICH

2 to see if, in fact, there was a judgment
3 against Mr. Morales?

4 A. Based on what I believe
5 happened, no. Solely as to their call,
6 because they were calling as -- my
7 recollection is they were calling about the
8 civil index number.

9 Q. And so, your recollection is
10 just based on reading these two collection
11 notes, is that right, or do you have an
12 independent recollection?

13 A. And a vague recollection of at
14 the time.

15 Q. So, if you had to do it all
16 over again and you got these two phone
17 calls, would you still have continued the
18 execution against Mr. Morales?

19 MR. PASHKIN: Objection as to
20 relevance.

21 A. If it happened as it did, that
22 they were calling about a civil index
23 number, I just would have answered that
24 question as to the civil index number.

25 MR. KESHAVARZ: Okay. Let me

1 G. KAVULICH

2 mark this as an exhibit.

3 (Whereupon, a motion was marked
4 as Plaintiff's Exhibit 13 for
5 identification as of this date by the
6 Reporter.)

7 Q. I'm showing you what's been
8 marked as Plaintiff's Exhibit 12, Morales
9 Bates stamped 57 through 68. Can you
10 identify that document, sir?

11 A. It's a motion objecting to a
12 claimed exemption.

13 Q. And did you file that document?

14 A. Did I file it? No.

15 Q. Did your office send a copy of
16 Exhibit 12 to TD Bank?

17 A. I would have to look at the
18 notes.

19 Q. Does anything in the document
20 itself at the end of the document tell you?

21 A. Yes, it seems to be like we
22 did.

23 Q. And what makes you say that?

24 A. Because I signed it.

25 Q. Just to make it clear for

1 G. KAVULICH

2 the --

3 A. I signed the affirmation of
4 service.

5 Q. On page Morales --

6 A. 68.

7 Q. Okay. Thank you.

8 MR. KESHAVARZ: So, just to
9 clarify the record, there were
10 accidentally two Plaintiff's Exhibits
11 12. So, to correct the record,
12 Plaintiff's Exhibit 13 is, in fact,
13 Morales pages 57 through 68.

14 Q. So, we're trying to figure out
15 why Claro's attorney might have called you
16 and said there's a case -- you restrained
17 his account in a civil index number.

18 And if you take a look at the
19 first page of the caption, where is that
20 captioned in?

21 A. Bronx.

22 Q. That's in the Civil Court of
23 the Bronx, correct?

24 A. Correct.

25 Q. So, just looking at this top

1 G. KAVULICH

2 left-hand corner, this would indicate that
3 there is a motion objecting to an exemption
4 claim form in Bronx Civil Court, correct?

5 A. In Bronx Civil Court in the
6 housing part of Civil Court.

7 Q. And is part 34H the housing
8 part?

9 A. Relevant to these types of
10 cases, yes.

11 Q. Okay.

12 Was the motion that's Exhibit
13 13 ever calendared with the court?

14 A. I think not.

15 Q. What makes you say that?

16 A. Because in the exhibit you're
17 showing me it says never calendared.

18 Q. From your own records or
19 collection notes or from any other source,
20 is that true, was it, in fact, never
21 calendared?

22 A. It was calendared in our system
23 when we did the motion, I'm assuming. But
24 I don't believe it ever made it to the
25 actual court calendar.

1 G. KAVULICH

2 Q. Do you know why not?

3 A. No.

4 Q. Do you know if your staff ever
5 contacted the court to set it for a
6 calendar?

7 A. If my staff ever what?

8 Q. Contacted the court to set a
9 hearing on the motion.

10 A. If my staff --

11 Q. Is there any indication that
12 your staff ever actually tried to set a
13 hearing date on the objection to the
14 exemption claim form that's Exhibit 13?

15 A. It seems at a certain point we
16 did when we drafted the motion.

17 Q. What makes you say that?

18 A. Because we drafted the motion.

19 Q. Okay.

20 Now, did anyone from your firm
21 ever go to the date and time of the
22 hearing, at least that's listed on Exhibit
23 13, May 18th, 2013?

24 A. It doesn't seem so.

25 Q. Do you know why?

1 G. KAVULICH

2 A. No. I would have to go back
3 and look.

4 Q. Where would you look?

5 A. In my notes.

6 Q. In your collection notes?

7 A. Yes.

8 Q. So, take your time and look at
9 Exhibit 10, if it helps you.

10 A. It looks like shortly before
11 that date, that it was determined that the
12 housing, the L&T court judgement, was not
13 against Mr. Morales.

14 Q. And what entry makes you say
15 that?

16 A. The May 18th entry.

17 Q. What does it say?

18 A. "Advised marshall to vacate
19 property execution versus Morales. Final
20 judgment not against him."

21 Q. Do you know from your records,
22 or from any other source, what triggered
23 your office to finally realize there was
24 not judgment against Mr. Morales?

25 A. No, I don't recall.

1 G. KAVULICH

2 Q. Was there anything in your
3 records, in the collection notes, or any
4 other document in your possession, custody
5 or control, that suggests to you why your
6 office finally realized that there was no
7 judgment against Mr. Morales?

8 A. No. It must have been through
9 discussion and review. But I can't tell
10 you.

11 Q. In your notice of motion you
12 make reference to a judgment actually being
13 attached to your motion, correct?

14 A. Yes.

15 Q. What item is that for the Court
16 Reporter, what page number?

17 A. Bates stamp 59.

18 Q. And what line number?

19 A. Paragraph four.

20 Q. And what does it say?

21 A. "Thereafter, petitioner
22 obtained a money judgment on or about March
23 13th, 2008 against the respondent in the
24 sum of \$4,352.74." And next to your 2 is
25 Exhibit 1, a copy of said judgment.

1 G. KAVULICH

2 Q. And Exhibit 1 is not, in fact,
3 a judgment, correct?

4 A. It's a judgment stipulation.

5 Q. Against who?

6 A. No, it's captioned against both
7 parties, Clara Potter and James Morales.
8 But the judgment was only against
9 Ms. Potter.

10 Q. And you're looking at Morales
11 62?

12 A. Yes.

13 Q. Is Morales 62 even the
14 judgement against Ms. Potter?

15 A. No, it's the stipulation
16 providing for it.

17 Q. So, if you had meaningfully
18 reviewed all the facts and circumstances of
19 the motion, should you have noticed that,
20 in fact, when you say that there's a
21 judgment attached, that you didn't actually
22 attach the judgement?

23 A. Say that again.

24 Q. If you did a meaningful
25 attorney review of the facts and

1 G. KAVULICH

2 circumstances of the account for which
3 you're objecting to the exemption claim
4 form, should you have noticed that when you
5 said under oath that the attached, that you
6 didn't, in fact, attach the judgment?

7 A. Well, there's no judgment
8 attached. So, there should have been.

9 Q. Or you should have checked to
10 see if there was a judgment at all against
11 Mr. Morales?

12 A. I believe that there was a
13 judgment form that the Housing Court issues
14 and this was put mistakenly in place of
15 that.

16 Q. We can pull out the form if
17 you'd like, but I'll just ask you straight
18 away, since you know this stuff much better
19 than I do: The judgment against
20 Mr. Morales was only a possessory judgment,
21 it was not a money judgement, correct?

22 A. Correct.

23 Q. And a money judgement can't be
24 entered in a landlord/tenant unless the
25 consumer actually shows up at the

1 G. KAVULICH

2 landlord/tenant proceeding, correct?

3 A. These days. But not years ago,
4 no, that's not true.

5 Q. At the date that the possessory
6 judgment against Mr. Morales was entered,
7 do you know if the rule was still there?

8 A. No, it was not. Oftentimes in
9 my experience in the 2000s, even though one
10 party didn't show up, there was a money
11 judgment entered against them, because only
12 one of the defendants/respondents appeared.

13 Q. Do you know if that was proper
14 under the rules at that time or do you not
15 know?

16 A. I don't know every Housing
17 Court rule, no.

18 Q. The reason I ask is you say
19 that's the rule now is that they can't get
20 a money judgment unless they're there,
21 right, that's the rule now?

22 A. That's the practice now, yeah.
23 So, I'm assuming that's the rule.

24 Q. Was that the practice and the
25 rule back then?

1 G. KAVULICH

2 A. I know that it was the
3 practice. If somebody gives me a judgment
4 with somebody's name on it, I assume it's
5 valid, you know, issued from the court
6 anyway.

7 Q. What I'm trying to nail down
8 is --

9 A. I don't know the rule, the
10 Housing Court rule. I'm not a Housing
11 Court attorney.

12 Q. Well, you worked at Gutman &
13 Mintz for years and you were at Housing
14 Court getting stipulations on Housing Court
15 cases every --

16 A. That's all I did, was write
17 stipulations. I wasn't in charge, nor did
18 I participate in any other meaningful
19 adjudication of Housing Court law.

20 Q. But you worked five days a week
21 usually --

22 A. No.

23 Q. Most of the time you were
24 actually -- when they make the hearing date
25 for a landlord/tenant case, you would go

1 G. KAVULICH

2 there and enter into stipulations at those
3 court dates, correct?

4 A. Correct. But I, very rarely
5 would I ever see -- all I would see is
6 this, page 62. I wouldn't touch or see the
7 judgments, generally, or the judge's order
8 beside this.

9 Q. And 62, again, is what?

10 A. Is the stipulation from Housing
11 Court.

12 Q. That stipulation is just an
13 agreement, it's not a judgment?

14 A. It's an agreement providing for
15 something. In this case it was for a
16 judgement.

17 Q. But the judgment would be
18 entered in the future, not at that time?

19 A. If you mean by future, within
20 15 minutes, yes. Or 5 minutes or 20
21 minutes. The clerk would then write or
22 type a judgment.

23 Q. Well, let me ask this
24 specifically, and I tried to ask you it
25 before, but maybe I didn't ask it well.

1 G. KAVULICH

2 So, this is the question: If
3 you'd done a meaningful attorney review of
4 the facts and circumstances of
5 Mr. Morales' account, should you have
6 determined whether, in fact, there was a
7 money judgment against him as indicated on
8 paragraph three of your affirmation?

9 MR. PASHKIN: Objection to
10 form, calls for a legal conclusion.

11 A. I don't know.

12 Q. Would you have done it all over
13 again?

14 A. Would I do what?

15 Q. Make the same affirmation.

16 A. If I knew there wasn't a
17 judgment, no, of course not.

18 Q. You should have checked to see
19 if there was a judgement prior to --

20 A. I did. I checked, but I was
21 mistaken in my checking.

22 Q. How do you know you checked?

23 A. Because this would have been
24 with the judgment (indicating).

25 Q. 62?

1 G. KAVULICH

2 A. Yes.

3 MR. KESHAVARZ: Mark this.

4 (Whereupon, an Answer was
5 marked as Plaintiff's Exhibit 14 for
6 identification as of this date by the
7 Reporter.)

8 Q. I'm showing what what's been
9 marked as Plaintiff's Exhibit 14. This is
10 your Answer in this FDCPA lawsuit; is that
11 right?

12 A. Yes.

13 Q. So, one of the things that you
14 were noticed for is on behalf of your firm,
15 the PC, you're to answer the basis from
16 your claims and defenses in the case.

17 So, let me just go through the
18 defenses on page eight, please.

19 The second affirmative defense:
20 What's the basis for the affirmative
21 defense that the action is barred by the
22 expiration of the applicable statute of
23 limitations?

24 A. You'd have to ask my attorney.

25 Q. Do you have any factual basis

1 G. KAVULICH

2 sitting here today in support of that?

3 A. I'm not sure.

4 Q. And it's going to be the same
5 for these other ones, so let me just go
6 through them one at a time.

7 A. And so will the answers.

8 Q. For the record, I just have to
9 do it.

10 For the third affirmative
11 defense that the claims are barred in whole
12 or in part by the doctrine of res judicata,
13 collateral estoppel and/or judicial
14 estoppel, what is the basis of that
15 affirmative defense?

16 A. You'd have to ask my attorney.

17 Q. And do you know of any factual
18 basis for that affirmative defense?

19 A. I would have to refer to -- I
20 would have to discuss it with my attorney.

21 Q. Is that the same answer for the
22 fourth affirmative defense?

23 A. As well as the fifth and sixth,
24 yes.

25 Q. Okay.

1 G. KAVULICH

2 Now, when we had the first part
3 of your deposition in this case -- I
4 believe it was in this case -- we talked
5 about the issue about whether money that's
6 exempt is commingled with money that is not
7 exempt, whether that means all of the funds
8 become nonexempt, do you remember that
9 conversation?

10 A. Vaguely.

11 Q. Did you --

12 MR. PASHKIN: Off the record.

13 (Whereupon, an off-the-record
14 discussion was held at this time.)

15 Q. Now, in the prior deposition
16 we'd asked if you'd knew of any cases to
17 support the assertion that mingling
18 exemption money with nonexempt money means
19 the entire pot becomes nonexempt, do you
20 remember discussing that before?

21 A. Vaguely. But yes.

22 Q. And so, you indicated
23 previously that you thought that there was
24 a case in Kings County Court that held
25 that, do you remember that?

1 G. KAVULICH

2 A. I'm sorry, I was writing it
3 down to remember to do it. Go ahead.

4 Q. Do you remember testifying
5 previously that you believed that there was
6 a case in Kings County that stood for that
7 proposition about commingling?

8 A. Yes, there surely was, but I
9 don't remember the name of the case.

10 Q. Do you recall any of the
11 details about the case, in terms of where
12 exactly it was?

13 A. Brooklyn.

14 Q. Brooklyn Small Claims Court?

15 A. Yes, civil. Small claims, yes.

16 Q. Is that the same as Civil
17 Court?

18 A. Well, it's part of it.

19 Q. What's the jurisdictional
20 limit, do you remember?

21 A. It's \$5,000. But I think then
22 it might have been 3,500.

23 Q. Is that the only basis that you
24 have for that belief about the commingling
25 of accounts?

1 G. KAVULICH

2 A. I would have to check.

3 Q. Sitting here today, that's all
4 you can recall?

5 A. Sitting here now, without any
6 further checking, yes.

7 Q. To your recollection, was that
8 Small Claims Court opinion ever adopted by
9 any other court, to your knowledge?

10 A. I don't know.

11 Q. All of the payments that were
12 collected on the index number against
13 Ms. Potter and Mr. Morales, do you know if
14 the payments that were made came from an
15 income execution on Ms. Potter?

16 A. A, I don't believe that there
17 were any moneys collected from Mr. Morales.
18 B -- that's it. And my belief is that the
19 moneys collected from Ms. Potter were
20 pursuant to a wage garnishment.

21 Q. And I might have asked the
22 question imprecisely.

23 Are all the moneys that were
24 paid towards the index number that was a
25 judgment for Ms. Potter and a non-judgment

1 G. KAVULICH

2 for Mr. Morales, were all those payments
3 made towards that index number come
4 entirely from Ms. Potter?

5 A. Yes.

6 Q. None of them came from
7 Mr. Morales?

8 A. Correct.

9 Q. And all the money from
10 Ms. Potter came from wage executions?

11 A. I believe so, yes.

12 Q. Do you know how much money was
13 restrained from Mr. Morales' TD Bank
14 account?

15 A. My recollection is that it was
16 a little bit less than \$1,100.

17 Q. Do you know how long the money
18 in Mr. Morales' TD Bank account was
19 restrained for?

20 A. About a month.

21 Q. After a month it was released?

22 A. Actually, about three weeks and
23 then it was released.

24 Q. And what do you base this on?

25 A. Our notes.

1 G. KAVULICH

2 Q. I'll go back to that in a
3 second.

4 Now, when a bank restraint is
5 issued, the bank takes out a \$75 processing
6 fee, correct?

7 A. Different banks have different
8 amounts.

9 Q. Usually about \$75?

10 A. Yes.

11 Q. That money being taken out of
12 the TD Bank account was caused by the
13 improper bank restraint by your office
14 against Mr. Morales, correct?

15 A. Correct.

16 Q. Did your office ever refund
17 Mr. Morales --

18 A. No.

19 Q. Did your office ever return the
20 processing charges of \$75 to Mr. Morales?

21 A. No.

22 Q. Why not?

23 A. I don't know.

24 Q. Did you actually collect any
25 money from the restraint of Mr. Morales' TD

1 G. KAVULICH

2 Bank account?

3 A. No.

4 Q. When a bank account is
5 restrained and the bank takes out its
6 processing fee, the bank generally doesn't
7 return the processing fee when the account
8 is released, right?

9 A. I don't know that.

10 Q. You don't know one way or the
11 other?

12 A. No.

13 Q. Do you know if your office
14 restrained Mr. Morales' TD Bank account
15 more than once?

16 A. No, just once.

17 Q. Okay.

18 Now, where in your notes or
19 from any other document do you base the
20 statement that \$1,100 in Mr. Morales' TD
21 Bank account was restrained?

22 A. Where did I get that amount?

23 Q. Yeah.

24 A. Because he called the office.

25 Q. What date entry?

1 G. KAVULICH

2 A. April 27th, 2015.

3 Q. And you're looking on the
4 collection notes, Exhibit 10?

5 A. Yes.

6 Q. And can you read that entry?

7 A. "James, TD Bank has \$1,081.19
8 restrained. Will PX. No POB in TD."

9 Q. Can you translate those
10 initials into words and reread that,
11 please?

12 A. Property execution is PX. POB
13 is place of business.

14 Q. So, can you reread that
15 sentence as a sentence? Just so it's clear
16 on the record.

17 A. TD Bank has \$1,081.19
18 restrained. Will do a property execution,
19 but there's no job information.

20 Q. And you believe that's based on
21 a call, those notes?

22 A. That actually is probably from
23 the response from TD.

24 Q. So, that entry is from TD Bank
25 itself?

1 G. KAVULICH

2 A. In other words, we got the
3 response from -- to the restraining notice
4 we sent.

5 Q. So, TD Bank told you that they
6 restrained \$1,081.19?

7 A. Correct.

8 Q. What is the entry above that
9 for 4/27/15, what does that mean?

10 A. That a property execution was
11 issued or printed, created.

12 Q. For \$4,352.74?

13 A. Yes.

14 Q. That's the face amount of the
15 judgment against Clara Potter?

16 A. Correct.

17 Q. That didn't credit for any
18 payments made by Clara Potter, correct?

19 A. Repeat that.

20 Q. That didn't credit for any
21 payments made --

22 A. No, that would be up to the
23 marshall, because it went to the same
24 marshall who was collecting on the income
25 execution.

1 G. KAVULICH

2 Q. You have to let me finish the
3 sentence.

4 The document that you generated
5 saying that there was an amount due of
6 \$4,352.74, that did not credit the payments
7 from the garnishments from Ms. Potter,
8 correct?

9 A. Correct.

10 Q. And why not?

11 A. Because the marshall would make
12 those credits that this property execution
13 was sent to, because that marshall was
14 collecting on the wage garnishment for
15 Ms. Potter.

16 MR. KESHAVARZ: Off the record.

17 (Whereupon, an off-the-record
18 discussion was held at this time.)

19 Q. What does the next entry
20 indicate to you?

21 A. The response to a restraining
22 notice sent to JP Morgan Chase.

23 Q. And what was the response?

24 A. No deposit accounts.

25 Q. Do you know if your office has

1 G. KAVULICH

2 produced a document showing the information
3 subpoena to JP Morgan Chase?

4 A. I don't remember, but I printed
5 everything and everything was given to you.

6 Q. If you had --

7 A. This actually shouldn't have
8 even been in there. Because when we get
9 negatives back, we usually don't process
10 them.

11 Q. You talked about this in the
12 prior deposition, but so this deposition is
13 clear, what do you mean by that?

14 A. If we get a negative response
15 back that there's no account then we
16 discard it.

17 Q. You toss the record?

18 A. We shred it.

19 Q. And why do you do that?

20 A. Because we don't want people's
21 Socials and information to get out.

22 Q. Why don't you scan that
23 document?

24 A. You mean --

25 Q. Why don't you just scan or save

1 G. KAVULICH

2 that document into your file?

3 A. It's not very efficient. We
4 don't have a lot of people and it's
5 irrelevant.

6 Q. So, the information subpoena to
7 JP Morgan Chase, you'd agree that your
8 office didn't have a legal right to issue
9 that, given that there was no judgment
10 against Mr. Morales?

11 A. Correct.

12 Q. And because this is an
13 information subpoena only and not a bank
14 restraint to JP Morgan Chase, Mr. Morales
15 wouldn't be sent a copy of the information
16 subpoena, correct?

17 A. Correct.

18 Q. So, Mr. Morales wouldn't have
19 any knowledge of the information subpoena
20 being sent to JP Morgan Chase?

21 A. Correct.

22 Q. What's the next entry, what
23 does that indicate to you?

24 A. The docket number for the
25 aforementioned property execution.

1 G. KAVULICH

2 Q. And this is 4/30/2015 entry?

3 A. Right.

4 Q. And that's for the property
5 execution for 4,352 right?

6 A. Well, 3,500 -- yes, for the
7 other amount.

8 Q. What is 3594?

9 A. The file number.

10 Q. When you say docket number was
11 received, what document is that, is there a
12 document?

13 A. Yeah, we get like -- you get it
14 in the mail from the marshall.

15 Q. What is it?

16 A. It's just a form and it has the
17 name of the case, our file number and the
18 docket number.

19 Q. Do you keep that response?

20 A. No.

21 Q. Do you know why you obtain them
22 if you don't keep them?

23 A. Do --

24 Q. Do you know why they're sent to
25 you if --

1 G. KAVULICH

2 A. So we have the docket number.

3 Q. So, you just make note of the
4 docket?

5 A. Yes, that's all it's worth.

6 Q. Before we go back, there was
7 something before -- I can't remember which
8 case -- about a 60-day extension?

9 A. Right.

10 Q. Tell me again what's that for.

11 A. For the property execution --
12 in layman's terms -- to be renewed.

13 Q. That's a document that the
14 marshall sends to your office?

15 A. Yes.

16 Q. And then what happens when you
17 get that document?

18 A. We look to see if we still --
19 the status of the case. And if we're still
20 seeking to collect, then we sign it and
21 send it back.

22 Q. If you know the answer: The
23 marshall's notes in, I forget which case,
24 says 60-day extension, 60-day extension,
25 60-day extension every couple of months.

1 G. KAVULICH

2 Does that mean that you sign
3 the form and send it back to continue it
4 and then they ask you again or do you know?

5 A. I don't know. I can't answer
6 for them. But I know that when we get
7 those, that's what that means.

8 Q. So, if you don't sign the
9 extension request, what happens then?

10 A. I assume that they -- I don't
11 know on their end. On our end it's because
12 we're not collecting -- we have no reason
13 or desire to collect anymore.

14 Q. If you don't sign it and send
15 it back, then all continued attempts to
16 collect on that by the marshall cease?

17 A. Well, they should.

18 Q. What's the basis for the 60-day
19 rule?

20 A. I don't know. It's just
21 something they came up with.

22 Q. Something in the CPLR?

23 A. Yeah.

24 Q. Thank you.

25 Now, the entry on 4/30 is the

1 G. KAVULICH

2 call from the Claro attorney again saying
3 that there wasn't a judgment, correct?

4 A. Correct.

5 Q. And then the entry on 5/20/2015
6 you received the exemption claim form, what
7 does that mean?

8 A. On April 29th?

9 Q. Or is that May 5th?

10 A. Yes.

11 Q. What does that entry say?

12 A. "Received exemption claim. Did
13 motion objecting to same. Served via mail
14 and fax."

15 Q. Okay.

16 Exemption claim from James,
17 who's James?

18 A. I skipped one, sorry.
19 Mr. Morales, I'm assuming.

20 Q. Gave to GK, and that's you, to
21 do an objection?

22 A. Correct.

23 Q. So, the guy in Laos, what's his
24 name again?

25 A. Collin.

1 G. KAVULICH

2 Q. Collin would draft that for you
3 and then you would sign it?

4 A. No.

5 Q. How would that work?

6 A. Either I would do it or an
7 associate.

8 Q. What's the entry before that
9 say?

10 A. "Received exemption from James,
11 gave to GK to do exemption." That's what
12 you just read.

13 Q. Yeah.

14 The entry one further up, what
15 is that?

16 A. That's what I mistakenly read
17 the first time. "Received exemption claim.
18 Did motion objecting to same. Served via
19 mail and fax."

20 Q. I meant the one above that.
21 I'm sorry.

22 A. "Court date scheduled for L&T."

23 Q. The initials are yours.

24 Do you know if you, in fact,
25 scheduled a court date for L&T?

1 G. KAVULICH

2 Apparently not?

3 A. Right. But again, this is all
4 contemporaneous, if you see that we
5 received the exemption and did the motion a
6 minute later. So, I must have did the
7 motion and then calendared inhouse.

8 Q. So, 18:33 is the military time?

9 A. Yes.

10 Q. And then entry on 5/7 is the
11 Legal Aid attorney again calling saying
12 that there's no judgement?

13 A. Correct.

14 Q. And then you continued to do
15 the execution on the judgment despite the
16 call, correct?

17 A. Well, the status quo, but we
18 didn't release it, yes.

19 Q. Then the one before that is
20 regarding Ms. Potter. The one before that,
21 May 18th, 2015, can you translate that,
22 please?

23 A. Subpoena?

24 Q. "Advised" --

25 A. "Advised marshall to vacate

1 G. KAVULICH

2 property execution versus Morales. Final
3 judgment not against him, Collin to send
4 release." Meaning the release to the bank.

5 Q. And again, you don't know what
6 triggered the release of the judgment about
7 why your office suddenly found out there
8 was final judgement?

9 A. We reviewed it again, but I
10 don't know what the -- why at that
11 particular moment.

12 Q. Now, the 5/19 entries indicate
13 that the bank account for Morales at TD
14 Bank was released. Or you tell me, I
15 guess.

16 A. It doesn't mean that the
17 account physically was released. It meant
18 that one was sent -- a release was sent.

19 Q. By who to who?

20 A. By Collin.

21 Q. By your office to who?

22 A. By my office to TD Bank.

23 Q. And was that also sent to the
24 marshall?

25 A. The release, no.

1 G. KAVULICH

2 Q. So, when was the first time --

3 A. We don't send a release to the
4 marshall. We just tell the marshall to
5 release the property execution. They don't
6 need a formal document like a bank needs on
7 our letterhead.

8 Q. A release to a bank is just a
9 letter saying "release the account"?

10 A. Right.

11 Q. And does it say why?

12 A. No.

13 Q. And when was the first time
14 that you told the marshall to release the
15 account?

16 A. May 18th.

17 Q. And do you know how that
18 information was conveyed?

19 A. I believe I e-mailed them.

20 Q. So, then why is it not till
21 July 23rd, 2015 is there an indication that
22 you advised the marshall to vacate the
23 execution versus Mr. Morales?

24 A. I don't know. It may have been
25 one of those letters that you eluded to

1 G. KAVULICH

2 earlier. I don't know.

3 Q. Well, is there any record, any
4 document that shows that your office told
5 the marshall to vacate the execution versus
6 Mr. Morales prior to July 23rd, 2015?

7 A. I would have to review all of
8 the documents.

9 Q. From the documents in front of
10 you today, is there any record that you
11 informed the marshall to vacate the
12 execution against Mr. Morales prior to
13 July 23rd, 2015?

14 A. Yes.

15 Q. And what is what?

16 A. My contemporaneous note on
17 May 18th.

18 Q. But you don't know if that's a
19 telephone call or if that's documented?

20 A. I don't recall.

21 Q. Nothing in your records
22 indicates whether there was a documentation
23 about letting the marshall know to release
24 the money on May 18th?

25 A. Again, I just answered, I don't

1 G. KAVULICH

2 know.

3 Q. Do you know how much money
4 you've paid your attorney to defend you in
5 this FDCPA action?

6 MR. PASHKIN: Objection as to
7 relevance.

8 MR. KESHAVARZ: You can answer.

9 MR. PASHKIN: I'm not going to
10 allow him to --

11 MR. KESHAVARZ: What's the
12 basis, on relevance?

13 MR. PASHKIN: It's privileged.
14 There's absolutely no basis for him
15 to answer that question.

16 MR. KESHAVARZ: Well, they're
17 two different things. Privilege, the
18 amount paid is not a privileged
19 issue.

20 MR. PASHKIN: That's an
21 irrelevant question. That's just to
22 harass my client. There's been no
23 basis to ask that question.

24 MR. KESHAVARZ: Well, let me
25 tell you what the basis is. There's

1 G. KAVULICH

2 case law that says the amount paid to
3 defense attorneys to defend an FDCPA
4 action may, under some circumstances,
5 be relevant to a reasonableness of a
6 plaintiff's attorney's fees.

7 MR. PASHKIN: Well, I'm not
8 aware of any case law. So, we can
9 mark it for a ruling. I will look it
10 up or you can send me the case law.

11 MR. KESHAVERZ: If you object
12 to the form you preserve the
13 objection. So, what's the harm?

14 Q. Do you have any problem telling
15 me how much you paid Mr. Pashkin?

16 A. I'm not going to answer that.

17 Q. But do you have any problem or
18 concern with doing that?

19 A. I'm not going to answer that.

20 Q. Have you paid Mr. Pashkin?

21 A. Yes, I paid him some money.

22 Q. Do you know what the hourly
23 rate Mr. Pashkin is charging you?

24 A. I don't remember.

25 Q. And you're going to follow your

1 G. KAVULICH

2 attorney's advice not to disclose how much
3 you paid him?

4 A. Say that --

5 Q. Are you going to follow your
6 attorney's advice and not disclose how
7 much --

8 A. Well, if a judge tells me I'm
9 supposed to, I'll go out there with a
10 bullhorn.

11 Q. Other than that, no?

12 A. No.

13 Q. Now, how do you communicate
14 with Rosewall regarding the collection
15 activities you have on their behalf?

16 MR. PASHKIN: Objection. It
17 was asked and answered during the
18 first part of the deposition.

19 A. I'll answer it.

20 Q. Is it just a ledger or is it
21 any other communication?

22 A. As we did discuss once before
23 at length, I would go there when I did
24 their work -- I don't do their work
25 anymore -- but I would go there.

1 G. KAVULICH

2 I don't remember exactly if
3 they gave me breakdowns or they gave me a
4 list. I would then go to their files. I
5 would physically remove their files and,
6 you know, within that would be a tenant
7 file -- in these kinds of cases there would
8 be a tenant file and it would have all the
9 tenants that they could fit.

10 And I would take out the
11 relevant or former tenant and then take out
12 the necessary paperwork and copy it.

13 Q. That I remember.

14 A. Then I don't know what else
15 you're asking.

16 Q. I meant during the course of
17 the collections.

18 Other than giving the payment
19 ledgers, during the course of your
20 collections, do you communicate back and
21 forth with Rosewall?

22 A. As necessary.

23 Q. Any particular reason that you
24 would do that, would that be unusual?

25 A. I don't remember any particular

1 G. KAVULICH

2 circumstances, but let's just say, for
3 example, there was a dispute. We served a
4 demand notice and there was a verification
5 request. But -- or we had a trial
6 scheduled.

7 Q. Something like that?

8 A. Yes.

9 Q. When you give the payment
10 ledger --

11 A. To Rosewall.

12 Q. -- do they give any accounting
13 back to you or is it only your accounting
14 to them?

15 Do they say this is what we
16 have as a balance?

17 A. No.

18 MR. KESHAVERZ: Let's go off
19 the record.

20 (Whereupon, an off-the-record
21 discussion was held at this time.)

22 Q. Does your office keep copies of
23 complaints by consumers that you're
24 restraining an account based on an invalid
25 or nonexistent judgment?

1 G. KAVULICH

2 A. I can't recall one, but any
3 relevant document we usually do keep.

4 Q. But if you got a complaint from
5 a consumer saying, "I don't have a
6 judgment, you're restraining my account,"
7 or a judgment has been vacated or so forth,
8 would you keep that document or would you
9 not keep that document?

10 A. Generally we would keep it.

11 Q. Why would you keep it?

12 A. Because it's relevant to the
13 case.

14 Q. Do you keep track of how many
15 such documents or complaints that you
16 receive?

17 A. No.

18 Q. Do you know how many documents
19 or complaints you've received?

20 A. No.

21 Q. I mean, other than Mr. Morales?

22 A. Correct.

23 MR. KESHAVARZ: Let's mark this
24 as an exhibit.

25 (Whereupon, a letter was marked

1 G. KAVULICH

2 as Plaintiff's Exhibit 15 for
3 identification as of this date by the
4 Reporter.)

5 Q. I'm showing what's been marked
6 as Exhibit 17, Bates stamped Morales 71.
7 Can you identify what that document is?

8 A. It's a letter from James
9 Morales, dated July 17th, stating that we
10 did an execution on his account at TD based
11 on a judgment that didn't exist
12 essentially.

13 Q. And you received that document
14 on or about July 17th, 2015?

15 A. I don't recall.

16 Q. Do you have any record in your
17 collection notes or elsewhere indicating
18 that you've received the Exhibit 15, the
19 July 17th, 2015 letter from Mr. Morales,
20 indicating to you that you're restraining a
21 bank account based on a nonexistent
22 judgment?

23 A. No.

24 Q. So, your office has no record
25 of receiving Exhibit 15?

1 G. KAVULICH

2 A. Correct. Especially in light
3 that by that time, we had already advised
4 the bank and the marshall to vacate.

5 Q. That's what I was going to get
6 to, because we talked before about what the
7 triggers could have been for taking certain
8 actions. So, let me talk about that
9 trigger, if it's a trigger.

10 Exhibit 15, the July 17th
11 letter, according to your notes, your
12 collection notes on the 23rd, you then
13 contact the marshall to tell the marshall
14 to vacate the execution against
15 Mr. Morales, correct?

16 A. On July 23rd?

17 Q. On July 23rd.

18 A. Right. Well, that was the
19 second time we advised the marshall. But
20 yes, on July 23rd it looks like we did.

21 Q. Does it appear to you that you
22 received the July 17th letter from
23 Mr. Morales and that's what triggered your
24 office to contact the marshall six days
25 later to advise them to vacate the

1 G. KAVULICH

2 execution against Mr. Morales?

3 A. That's conjecture, but there's
4 a certain amount of common sense to that, I
5 would guess.

6 Q. Assuming my client testifies
7 that he, in fact, sent Exhibit 15 to your
8 office, why didn't your office keep a copy
9 note or at least note its receipt?

10 A. It could be scanned into
11 another file as we discussed before. I
12 don't know.

13 Q. But you checked all your files
14 and you produced all your records regarding
15 Mr. Morales in this case, correct?

16 A. Yeah, it's just one -- it's not
17 like we have multiple files. It's just
18 one.

19 Q. Putting aside the scanning
20 issue, if Exhibit 15 was, in fact, scanned,
21 you would have found it and produced it?

22 A. Yeah, sure.

23 MR. KESHAVARZ: Let me talk
24 about another trigger or possible
25 trigger and mark this.

1 G. KAVULICH

2 (Whereupon, letter was marked
3 as Plaintiff's Exhibit 16 for
4 identification as of this date by the
5 Reporter.)

6 Q. I'm showing you what's been
7 marked as Exhibit 16, Bates stamped Morales
8 69, a letter dated May 15th, 2015 from TD
9 Bank to Mr. Morales.

10 Can you review that document
11 and let me know when you're done, please.

12 A. Okay.

13 Q. Now, we're trying to figure out
14 before what the trigger could have been for
15 your office on May 18th, 2015 to apparently
16 tell the marshall to release the restraint,
17 when just on May 7th you didn't do so in
18 response to a call from the Legal Aid
19 lawyer.

20 So, let me ask you this: Did
21 you receive any correspondence from TD Bank
22 regarding a complaint that he filed against
23 TD Bank about improper restraint of his
24 bank account?

25 A. No.

1 G. KAVULICH

2 Q. Given that you contacted the
3 marshall's office three days after the date
4 of May 15th, do you think it's possible
5 that the reason that you contacted the
6 marshall was that TD Bank contacted you
7 about Mr. Morales' complaint that his bank
8 was being restrained on a nonexistent
9 judgement?

10 A. No. As I mentioned earlier, I
11 think the most logical reason was the
12 review in preparation for court on the
13 motion.

14 Q. Well, you didn't go to court on
15 the motion.

16 A. Right. The review for
17 preparation for court. In other words,
18 looking at the cases before we go to court
19 and reviewing it and something could have
20 stood out.

21 Q. But again, there was no actual
22 setting for May 18th, right?

23 A. I'm sorry?

24 Q. May 18th, the notice of motion
25 was never actually calendared with the

1 G. KAVULICH

2 court for May 18th or any date, right?

3 A. I believe not, right. I don't
4 know that I've ever seen -- other than
5 private reading Office -- I would remember
6 something like this -- Office of the
7 Comptroller of the Currency.

8 Q. So, when you get an exemption
9 claim form, is it your understanding that
10 if you're going to file an objection you're
11 required to file that objection either 10
12 or 14 days after the date of the
13 objection -- of the exemption claim?

14 A. Of the exemption claim, it's
15 eight days.

16 Q. So, eight days from the date of
17 the exemption claim form you have to set a
18 hearing and the hearing has to happen eight
19 days -- or you tell me -- eight days from
20 the date of the exemption?

21 A. Third time. We get the
22 exemption claim form and we have eight days
23 from the date on it to file a motion
24 objecting to it. But clearly that date
25 can't be, because we don't deliver them

1 G. KAVULICH

2 personally. We mail them. So, 13 days.

3 As long as we get something to
4 the bank, get the motion to the bank within
5 eight days of the date of the exemption.
6 It doesn't necessarily mean the day we get
7 it. The date that the judgement
8 debtor/account holder fills it out.

9 Q. But when does the hearing on
10 the objection to the exemption have to be
11 heard, within how many days?

12 A. It doesn't. There is no -- it
13 doesn't have to be within eight days.

14 Q. Does the hearing on the
15 objection to exemption have to be within a
16 certain number of days?

17 A. Not to my knowledge, no. As
18 long as we file the objection within eight
19 days.

20 Q. Got it.

21 We talked in the prior
22 deposition about you relying on the
23 marshall to do the accounting for the
24 amount due, correct?

25 A. For the interest calculation,

1 G. KAVULICH

2 the compoundage calculation, yes.

3 Q. Do you have any system in place
4 to make sure that you're not sending one
5 punitive judgment account to two different
6 marshalls, do you have any system in place
7 to track that?

8 A. Just manually.

9 Q. So, the answer is no?

10 A. No, that's a system. We're not
11 Mill Harris, where I have thousands --

12 MR. PASHKIN: Don't compare
13 yourself to them, please.

14 THE WITNESS: I don't know many
15 other ones. I meant only by volume.

16 Q. And the point being, if it was
17 at two marshalls, then one marshall
18 wouldn't be able to credit the payments
19 that are made to the other?

20 A. There would be a disconnect.

21 (Continued on next page to
22 include jurat.)

23

24

25

1 G. KAVULICH

2 Q. So, the numbers would be off?

3 A. Correct.

4 MR. KESHAVARZ: That's all I
5 have.

6 Anything else?

7 No.

8 Appreciate your time, sir.

9 (Whereupon, at 1:58 P.M., the
10 examination of this witness was
11 concluded.)
12
13

14

15

16 _____
17 GARY KAVULICH

18

19

20 Subscribed and sworn to before me

21 this _____ day of _____ 20____.

22

23 _____
24 NOTARY PUBLIC

25

1 G. KAVULICH
2 E X H I B I T S
3

4 PLAINTIFF'S EXHIBITS:
5

6	EXHIBIT	EXHIBIT	PAGE
7	NUMBER	DESCRIPTION	
8	9	Landlord's ledger	209
9	10	Collection notes	209
10	11	Bank restraint	240
11	12	Property execution	240
12	13	Motion	245
13	14	Answer	257
14	15	July 17th letter	284
15	16	May 15th letter	288

16
17 (Exhibits retained by Counsel.)
18
19

20 I N D E X
21

22	EXAMINATION BY	PAGE
23	MR. KESHAVARZ	209

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G. KAVULICH

C E R T I F I C A T E

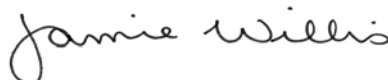
STATE OF NEW YORK)
 : SS.:
COUNTY OF RICHMOND)

I, JAMIE WILLIS, a Notary Public for
and within the State of New York, do hereby
certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and
that such examination is a true record of
the testimony given by that witness.

I further certify that I am not
related to any of the parties to this
action by blood or by marriage and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 23rd day of December 2016.



JAMIE WILLIS

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